

1842-0018

REMARKS

Reconsideration of the present application as amended is requested. Applicant had previously filed a Preliminary Amendment with this RCE filing. This Second Preliminary Amendment is based on the claims after that preliminary amendment.

In particular, Applicants have added new dependent claims 217 and 218 that refer to the top-most and bottom-most elements of the plurality of elements recited in independent claim 117. Support for the limitations in claims 217 and 218 is found, for instance, in FIGS. 28, 37 and 38 and the associated text. Applicants have also amended dependent claims 201 and 202 to depend from new claim 218.

Applicant incorporates the arguments set forth in the Preliminary Amendment when this RCE was initially filed. Moreover, it is pointed out that new claims 217-218, and their dependent claims 201 and 202, are neither disclosed nor contemplated in the cited reference. The Samani reference is inapplicable for the reasons expressed in the initial Preliminary Amendment. In particular, the Samani components of the interspinal implant are not substantially similarly configured and are unable to be consecutively inserted to produce distraction, as required in the parent independent claim 117.

With respect to the Brantigan reference, even if the Brantigan plugs can be regarded to meet the limitations of claim 117 (which Applicants dispute), this reference fails to disclose that either the top-most or bottom-most plug is configured differently or is configured with a length larger than any other plug in the resulting implant structure. In particular, the Brantigan plugs have a uniform cross-section throughout the entire stack. There is no suggestion in Brantigan to make any of the plugs with a different length than any other plug. Instead, the ring configuration of the Brantigan plugs teaches away from any one of the plugs having a different configuration since differently sized rings would not support each other within the stack. Moreover, since only a few plugs are incorporated into a stack, the modularity of the Brantigan implants would be frustrated by having differently sized plugs.

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In view of the foregoing arguments and amendments, it is believed that all of the pending claims 117, 118, 121, 125-129, 201-204 and new claims 217-218 are allowable over the art of record. Action toward a Notice of Allowance is earnestly requested.

Respectfully Submitted,



June 19, 2006

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